



RIGHTS STUFF

A Publication of The City of Bloomington
Human Rights Commission

City of Bloomington

July 2013
Volume 167

Indiana Declares New Form of Illegal Discrimination

It's often quite difficult for people with arrest or criminal records to find jobs. A new law may make it easier by setting up mechanisms through which job seekers can get their court and criminal records expunged and by prohibiting employers from considering these expunged records.

House Enrolled Act 1482 says that if someone was arrested but never convicted or if the conviction was vacated on appeal, the applicant may petition the appropriate court to seal the records related to the court proceedings. The judge can order that the records be accessible only to criminal justice agencies and not to prospective employers.

Someone convicted of a misdemeanor, including a Class D felony reduced to a misdemeanor, may petition the appropriate court after five years to have the record expunged. If the judge finds that the required length of time has passed, that the petitioner has no charges pending against him, that his driver's license is not currently suspended, that he successfully served his sentence and that he has not been convicted of another crime, the judge should order the conviction records be expunged from the files of the court, the department of corrections, the bureau of motor vehicles and any

one who provided treatment to the petitioner under court order. This provision does not apply to elected officials convicted of an offense while serving in office or while running for office, to sex or violent offenders, to people convicted of a felony that resulted in bodily injury to another person, to people convicted of perjury or to people convicted of official misconduct.

If someone was convicted of a Class D felony, he may petition the appropriate court in eight years to expunge his record. The judge will look at the same factors as for someone convicted of a misdemeanor and if appropriate, will order the criminal record be expunged as well.

The new law says that it is unlawful discrimination for any person to suspend, expel, refuse to employ, refuse to admit, refuse to grant a license or otherwise discriminate against someone because of a conviction or arrest record that has been expunged or sealed. Such unlawful discrimination is a Class C infraction and anyone who commits such an act may be held in contempt. The law directs employers to ask something along these lines on job applications:

(continued on page 3)

BHRC Staff

Barbara E. McKinney,
Director

Barbara Toddy,
Secretary

Commission Members

Byron Bangert, Chair

Carolyn Calloway-Thomas,
Vice Chair

Alexa Lopez,
Secretary

Valeri Haughton

Michael Molenda

Teri Guhl

Beth Applegate

Mayor

Mark Kruzan

Corporation Counsel

Margie Rice

BHRC
PO BOX 100
Bloomington IN
47402
349.3429
human.rights@
bloomington.in.gov



Does FMLA Cover a Trip to Las Vegas?

Beverly Ballard worked for the Chicago Park District. In early 2006, her mother, Sarah Ballard, was diagnosed with end-stage congestive heart failure and was not expected to live long. Sarah lived with Beverly. After her diagnosis, a hospice worker routinely visited their home to provide Sarah with medical care. But these visits became less frequent as Beverly learned to provide more of the care. Beverly became Sarah's primary care giver, making her healthy meals, giving her insulin shots and operating a pump to remove fluid from her heart.

In December, Beverly learned that she and her mother had been granted a trip to Las Vegas by the Fairygodmother Foundation, a charity which grants wishes to people with terminal illnesses. The trip was scheduled for late January.

Beverly said she told her boss in mid-December that she needed time off under the Family and Medical Leave Act (FMLA) to take her mother to Las Vegas, where she would be her mother's primary caregiver. He said he was busy but would get back to her. He didn't recall that conversation. She left messages for him but he didn't return the calls. She faxed him her leave request, but the quality of the fax was poor and he misread it, believing she was asking for personal time off. He denied her request, saying she didn't have enough benefit time to cover personal time off and her

division could not spare her.

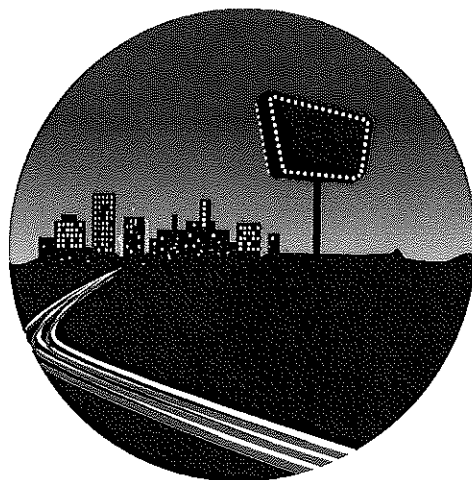
When Beverly received the denial, she said she repeatedly called her supervisor but was never able to reach him. She went ahead with her trip, believing that her FMLA request would ultimately be granted. While she and her mother were in Las Vegas, they played slots, shopped, people-watched and ate out. She continued to provide the same type of medical care to her mother as she had when they were in Chicago.

When Beverly returned to work, she was fired for having taken unauthorized time off. She sued under the FMLA and recently won a preliminary victory.

The FMLA requires covered employers to let covered employees take time off, paid or unpaid, to care for parents or children with serious medical conditions. The Chicago Park District argued that a trip to Las Vegas was not what the law meant when it talked about caring for a sick parent. The Court disagreed. Beverly was caring for her mother both in Chicago and in Las Vegas. Nothing in the law says where the care must be provided. The Court said, "That Ballard provided these services to her mother while Sarah Ballard went on an end-of-life trip does not detract from the fact that her mother's basic medical, hygienic and nutritional needs could not be met without Ballard's assistance."

The Court said a full hearing was necessary to determine if Ballard had given her employer proper notice of her need to take the time off.

The case is Ballard v. Chicago Park District, 2012 WL 4578059 (N.D. Ill. 2012).





Bad Credit History Makes it Hard to Find a Job

According to the Society for Human Resource Management, about 50% of its members check the credit history for some or all of their applicants. Doing so is inexpensive and easy. The companies that sell these credit histories say that credit reports help companies determine if applicants should be trusted with fiduciary or cash handling responsibilities, access to expensive equipment, other people's property or otherwise placed in a position of trust. Someone who doesn't pay her bills on time may not be a person you should trust with your business, they argue.

But studies have found no link between a person's credit score and unwelcome behavior such as workplace theft. It's not clear that the reports tell the employers any thing of value about applicants.

People may have bad credit scores for a variety of reasons, some of which have little to do with their character flaws, including incurring medical expenses not covered by insurance and losing their jobs due to no fault of their own during the great recession. Members of some minority groups were hit hardest by the recession and may have the worst credit reports as a result. In the last few years, nine states have passed laws limiting the use of credit reports to judge prospective hires. A bill was introduced in the 2013 Indiana State Assembly to do the same, but it did not become law. A bill has been introduced in Congress to limit the use nationally.

The best practice for employers is to use reports carefully, making sure that there is a connection between the job and the need for a good credit history, and to give

applicants a chance to explain why their credit report is negative. It's also important for employers to follow the laws that require them to notify in writing applicants who were denied jobs because of their credit rating. The law requires that employers let applicants know that while running a credit check, the employer found information that played a role in its hiring decisions. Too many employers ignore this requirement. Given that many credit reports allegedly have inaccurate information, it's important that applicants know why they were denied a chance at a job so they may attempt to fix any errors.

(Based on *The Long Shadow of Bad Credit*, by Gary Rivlin, New York Times, Sunday Business section, page 1, May 12, 2013.)

New Form of Illegal Discrimination

(continued from page 1)

"Have you ever been arrested for or convicted of a crime that has not been expunged by a court?" The law says that "the civil rights of a person whose conviction has been expunged shall be restored, including the right to vote, to hold public office, to serve as a juror, and, to the extent not prohibited by federal law, to own or possess a firearm."

Anyone whose records have been expunged or sealed is to be treated as if he had never been convicted or arrested.

However, if the person is subsequently convicted on an unrelated offense, the court may consider the expunged record in determining the appropriate

sentence.

If you have questions about getting your records expunged, please contact a private attorney.



Do Landlords Have to Give Tenants Who Use Drugs a Second Chance?

Autumn Oliver lived in subsidized housing in South Bend, Indiana. Her lease said that the landlord had zero tolerance for criminal activity and that anyone who engaged in any drug-related criminal activity on or off the premises was subject to eviction.

Oliver was arrested for possession of cocaine near her apartment. She pled guilty, but the plea agreement said that if she completed a substance abuse program, she would be allowed to withdraw her plea program and move for dismissal of the charges. She entered the substance abuse program and then the landlord moved to evict her and her son. She sued, alleging that the landlord had evicted her on the basis of her disability (drug addiction) and refused to accommodate her by giving her a second chance. Landlords are required to provide reasonable accommodations to tenants with disabilities.

The Court said that at the time of the eviction, Oliver was a current drug user, and current drug users are not considered to have a disability under fair housing laws. Landlords are not required to provide reasonable accommodations to tenants who do not have disabilities.

The case is A.B. v. Housing Authority of South Bend, Indiana, 498 Fed. Appx. 620 (7th Cir. 2012).

Is Reassignment a Reasonable Accommodation?

Employers and courts have often been faced with the following situation: an employee is no longer able to do her current job because of a disability. She applies for another job the employer has available. She meets the employer's minimum qualifications for the new job, but she is not the best qualified applicant. Is the employer required to reassign her to the new job, even though she is not the best qualified applicant?

The Seventh Circuit Court of Appeals recently said yes. The Court held that the Americans with Disabilities Act (ADA)

EEOC Sues Walmart

The U.S. Equal Employment Opportunity Commission has filed a lawsuit against Walmart on behalf of Jamie Wells. The EEOC said that Wells, who has a developmental disability, worked for the store's lawn and garden department for more than 11 years. For about six years, the EEOC said, the store allowed a male co-worker to sexually harass Wells. The co-worker, among other things, allegedly touched Wells in a sexual manner at the store. The store's management was aware of the harassment but did not take prompt or effective action to remedy the situation. Three weeks after Wells complained, the store fired her.

Debra Lawrence, an attorney for the EEOC, said "Ms. Wells' impairment made her particularly vulnerable to sexual harassment. Once this Walmart was put on notice of the harassment, it had a legal responsibility to take immediate and appropriate action to stop the misconduct. When an employer fails to do so, the EEOC must and will hold that employer responsible."

The EEOC's press release announcing the lawsuit does not give Walmart's side of the story.

"does indeed mandate that an employer appoint employees with disabilities to vacant positions for which they are qualified, provided that such accommodations would be ordinarily reasonable and would not present an undue hardship to that employer." ADA reassignment rights will not trump seniority rights under a collective bargaining agreement, but otherwise, they will typically prevail.

The case is Equal Employment Opportunity Commission v. United Airlines, Inc., 2012 WL 3871503 (7th Cir. 2012). If you have questions about your rights and responsibilities under the ADA, please contact the BHRC.